

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

KEVIN JERMAINE DAVISON,)	
)	
Petitioner,)	
)	
vs.)	CAUSE NO. 4:17-CV-68
)	
INDIANA ATTORNEY GENERAL,)	
)	
Respondent.)	

OPINION AND ORDER

This matter is before the court on the Petition under 28 U.S.C. Paragraph 2254 for Writ of Habeas Corpus filed by Kevin Jermaine Davison on August 7, 2017. For the reasons set forth below, the petition is **DISMISSED** for want of jurisdiction and the clerk is **DIRECTED** to close this case.

DISCUSSION

Davison, a petitioner without a lawyer, is attempting to challenge his conviction in the Tippecanoe Superior Court under cause number 79D02-9903-CF-27. However, this is not the first time that he has challenged that conviction. In *Davison v. Carter*, 2:08-CV-151 (N.D. Ind. filed May 12, 2008), he was denied habeas corpus relief because he had already completed his sentence before he filed that case. Though the court did not address the substance of his arguments, a procedural dismissal counts as a prior petition if "the petitioner is incapable of curing the defect underlying

the district court's judgment." *Altman v. Benik*, 337 F.3d 764, 766 (7th Cir. 2003). Such is the case here. Davison had completed his sentence before filing his prior habeas corpus challenge. There is nothing that he can do to change that reality. As such, this is a successive petition.

However, Davison has not been authorized to file a successive petition as required by 28 U.S.C. § 2244(b)(3)(A). "A district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing." *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). Therefore this case must be dismissed because this court lacks jurisdiction to hear it.

CONCLUSION

For the reasons set forth above, the petition is **DISMISSED** for want of jurisdiction and the clerk is **DIRECTED** to close this case.

DATED: September 11, 2017

**/s/Rudy Lozano, Judge
United States District Court**